

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TARZ MITCHELL,

Plaintiff,

vs.

ABRAHAM LOPEZ, et al.,

Defendants.

Case No. 3:08-cv-00382-ECR-RAM

ORDER

With reference to lines 11 and 12, page 6 of the Pretrial Order, and in lieu thereof, within 30 days from the entry of this Order, Plaintiff shall file a supplement to the Pretrial Order listing the specific relevant Nevada Department of Corrections (“NDOC”) administrative regulations he proposes to offer at trial.

Depositions

Except for impeachment purposes, the parties may not reserve the right to present deposition testimony as provided in Section D, page 8 of the Pretrial Order.

If either party should desire to offer deposition testimony at trial, at least thirty-one (31) days prior to the date set for trial, then such party shall file a supplement to the Pretrial Order listing the deposition testimony the party desires to offer for other than impeachment purposes, including the particular witness

1 and specific references to the testimony to be offered by pages and lines. The
2 opposing party shall thereafter have seven (7) days to file objections to any such
3 testimony to be offered. The objections shall be stated in summary fashion, but
4 in sufficient detail so that the objections may be understood. The objections may
5 not be merely stated in conclusory terms, such as hearsay, irrelevant, and the like.

6 The admissibility of the deposition testimony is referred to the Magistrate
7 Judge for purposes of ruling on its admissibility to the extent this can reasonably
8 and feasibly be done pretrial.

9 **IT IS HEREBY ORDERED** that, not less than sixty (60) days prior to the
10 trial date, the parties shall file an itemized joint statement setting forth their
11 objections, if any, to each of the exhibits to be presented by the opposing party at
12 trial, and the exhibits to which no objection is made. The objections shall be
13 made in sufficient detail so that the basis for the objection can be readily
14 understood. Objections shall not be stated in general terms, such as “relevancy,”
15 or the like. The term “exhibits” as used in this order includes evidence of every
16 kind.

17 **IT IS FURTHER ORDERED** that any objections to admission of items
18 of evidence and deposition testimony, as set forth in the Pretrial Order, are
19 referred to the Magistrate Judge for consideration and ruling to the extent such
20 rulings can be reasonably and feasibly made prior to trial.

21 It should be possible for many of the objections to be disposed of pretrial,
22 because they do not involve the need to hear the evidence at trial.

23 Paragraphs A.10 and B.7 on page 9 of the Pretrial Order are stricken.
24 Within 30 days, the parties respectively shall file a supplemental list of any
25 additional witnesses they desire to call in their case in chief. If appropriate
26 during the trial, the parties may call proper rebuttal witnesses.

27 The Magistrate Judge shall also review the witness lists presented by the
28 parties in the Pretrial Order to determine if witnesses to be presented are

1 duplicative or unreasonably cumulative, whether their proposed testimony is
2 relevant, whether such witnesses should be presented to testify under the
3 disclosure and discovery rules, and shall enter appropriate orders as to whether
4 which witnesses will be permitted to testify at trial. The Magistrate Judge shall
5 also determine if the respective parties will in fact be able to physically present
6 any such witness in person at the trial.

7 The Magistrate Judge is authorized to require offers of proof as to the
8 testimony to be offered by each witness and as to the foundation for each item of
9 evidence to which an objection has been made.

10 The Magistrate Judge is authorized to modify the Pretrial Order upon
11 consideration of these matters, and to make all rulings thereon which can
12 reasonably be made at this time.

13 The Magistrate Judge will substantially assist the Court in the processing
14 of this case by undertaking the foregoing proceedings. By going through the
15 items of evidence and depositions, and considering the respective witnesses's
16 testimony, frequently the parties and/or the Court will reasonably, readily,
17 recognize evidence which is inadmissible, or should be withdrawn, or which,
18 upon proper available foundation, will be obviously admissible, or on the other
19 hand, where ruling should be withheld until trial. The Magistrate Judge will
20 have the benefit of the Pretrial Order and the arguments of counsel to assist in
21 making these rulings.

22 Obviously, the conduct of the trial will be greatly expedited by the
23 Magistrate Judge undertaking this assignment.


24 The rulings of the Magistrate Judge will be subject to appeal to this Judge,
25 if timely appeal is filed. The Magistrate Judge has extensive experience in
26 resolving such matters, both as an attorney in practice, and sitting on the bench as
27 a trial judge, and is well qualified to undertake such rulings.

28 We realize this order places a considerable burden on the Magistrate

1 Judge. We trust, however, that the Magistrate Judge will not be inclined to
2 ignore this order, but if the Magistrate Judge would prefer not to undertake this
3 reference, or feels uncomfortable in doing so, or feels such an order is
4 inappropriate in the circumstances, we should be so advised so that we can
5 undertake to arrange other procedures to accomplish the goals we seek to achieve
6 in entering this order.

7 IT IS FURTHER ORDERED that this action is referred to the Magistrate
8 Judge for purposes of holding a settlement and status conference prior to the date
9 set for the trial.

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11 Dated this 26th day of May 2011.

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14 EDWARD C. REED, JR.
15 United States District Judge
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